

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SCOT ALLAN BEANE,
Defendant.

Case No. 08-cr-00260-PJH-1

ORDER DENYING MOTION TO STAY

Re: Doc. No. 38

United States District Court
Northern District of California

The government has filed a motion to stay the motion of Scot Allan Beane to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 under the holding of *Johnson v. United States*, 135 S. Ct. 2551 (2015). The government seeks a stay of the § 2255 motion on the ground that the Supreme Court granted certiorari in *Beckles v. United States*, No. 15-8544, which presents issues raised in defendant's § 2255 motion in light of the holding of *Johnson*, where the Court held unconstitutionally vague the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii) (defining "violent felony" to include an offense that "otherwise involves conduct that presents a serious potential risk of physical injury to another"). The ACCA residual clause invalidated in *Johnson* is identical to the residual clause of the definition of "crime of violence" in the career offender guidelines, U.S.S.G. § 4B1.2(a)(2). The Supreme Court granted certiorari review in *Beckles* on the questions whether *Johnson* applies retroactively to collateral cases challenging federal sentences enhanced under the residual clause in U.S.S.G. § 4B1.2(a)(2), and whether *Johnson's* constitutional holding applies to the residual clause in U.S.S.G. § 4B1.2(a)(2), thereby rendering challenges to sentences enhanced under it cognizable on collateral review.

1 The government represents that *Beckles* will likely decide the application of
2 *Johnson* to the Guidelines and the retroactivity question presented in defendant's § 2255
3 motion. Doc. no. 38. Defendant promptly filed an opposition to the motion to stay,
4 emphasizing that he would be prejudiced by a stay of his § 2255 motion because he
5 remains in custody in federal prison while awaiting a ruling on his *Johnson* claim
6 challenging the career offender sentencing enhancement. Doc. no. 39. Defendant is
7 currently serving a 151-month sentence. The court notes that the BOP.gov inmate
8 locator indicates that defendant's release date without relief under § 2255 is set for
9 August 15, 2019. In his § 2255 motion, defendant argues that his guideline range with
10 the career offender enhancement at the time of sentencing was 151-188 months, and
11 that without the career offender enhancement, his guideline range would have been 84-
12 105 months, which could result in a potential sentence reduction of 46 to 67 months
13 under the guidelines if relief is granted. Doc. no. 32.


14 In support of his opposition to the stay, defendant cites *Yong v. I.N.S.*, 208 F.3d
15 1116 (9th Cir. 2000), where the Ninth Circuit held that the district court abused its
16 discretion by staying a habeas petition pending resolution of an appeal in a case before
17 the Ninth Circuit presenting similar issues to be decided, *Ma v. Reno*, 208 F.3d 815 (9th
18 Cir. 2000), *vacated by Zadvydas v. Davis*, 533 U.S. 678 (2001). In reviewing the stay
19 order, the Ninth Circuit noted that "because the stay terminates upon the 'resolution of
20 the [*Ma*] appeal,' if the Supreme Court should grant certiorari to review this court's
21 decision in *Ma*, the stay could remain in effect for a lengthy period of time, perhaps for
22 years if our decision in *Ma* is reversed and the case is remanded for further proceedings."
23 *Id.* at 1119. The court in *Yong* reasoned that "habeas proceedings implicate special
24 considerations that place unique limits on a district court's authority to stay a case in the
25 interests of judicial economy," and held that "although considerations of judicial economy
26 are appropriate, they cannot justify the indefinite, and potentially lengthy, stay imposed
27 here." *Id.* at 1120-21.

1 The court carefully considers whether a stay pending resolution of *Beckles* is likely
2 to be resolved without inordinate delay because of the court's duty to adjudicate habeas
3 petitions in a timely manner. *Yong*, 208 F.3d at 1119-20. Because a decision in *Beckles*
4 is expected within a year, the government does not seek an indefinite stay. Unlike the
5 appeal at issue in *Yong* which was subject to further review, the Supreme Court is likely
6 to decide conclusively the question presented in *Beckles* whether *Johnson* applies
7 retroactively to collateral challenges to sentence enhancements applied under the
8 residual clause of the guidelines. However, staying these proceedings pending a
9 decision by the Supreme Court on this threshold question could result in prejudicial delay
10 to defendant, who seeks a reduced term of imprisonment that, if granted and subject to
11 resentencing, could be exceeded by time served. Under these circumstances,
12 considerations of judicial economy are outweighed by the potential prejudice to
13 defendant, and a stay is not warranted.

14 Accordingly, the government's motion to stay the § 2255 motion is DENIED.

15 **IT IS SO ORDERED.**

16 Dated: July 28, 2016

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19 PHYLLIS J. HAMILTON
20 United States District Judge
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